

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>CURT THOMAS</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	<b>NO. 06-CV-291</b>
	:	
<b>DR. FELIPE ARIAS, <u>et al.</u></b>	:	
	:	

**MEMORANDUM AND ORDER**

**Kauffman, J.**

**January 23 , 2007**

Plaintiff Curt Thomas ("Plaintiff") brings this pro se action for violations of 42 U.S.C. § 1983 against Doctor Felipe Arias, Deputy Superintendent Murray, Grievance Coordinator Wendy Moyer, Doctor Robert Maxa, and Physician's Assistant ("P.A.") Rhonda Sherbine (collectively, "Defendants"). Now before the Court are the Motions to Dismiss of Dr. Arias, Dr. Maxa, and P.A. Sherbine and the Motion to Dismiss of Deputy Superintendent Murray and Grievance Coordinator Moyer. For the reasons that follow, the Motions will be granted in part and denied in part.

**I. BACKGROUND**

Accepting the allegations of Plaintiff's pleadings as true and drawing all inferences in his favor, the relevant facts are as follows.<sup>1</sup> Plaintiff, an inmate at the State Correctional Institution at Forest ("SCI Forest"), was transferred to the State Correctional Institution at Graterford ("SCI

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<sup>1</sup> Plaintiff filed his original Complaint on March 28, 2006. On June 1, 2006, Plaintiff filed an Amended Complaint. The Amended Complaint failed, however, to include many of the allegations Plaintiff made in his original Complaint. Since pro se pleadings are held to "less stringent standards than formal pleadings drafted by lawyers," Garland v. Horton, 129 Fed. Appx. 733, 734 (3d Cir. 2005), when evaluating the instant Motions, the Court will consider all allegations made by Plaintiff, whether they are found in the Complaint, the Motion to Amend, or the Amended Complaint.

Graterford”) on May 27, 2005 and placed in a Restricted Housing Unit (“RHU”). Compl. ¶ 1. Plaintiff alleges that Deputy Superintendent Murray placed him in the RHU “for an incident which happened in 1982, twenty years prior” without a hearing or any sort of due process. Id. Plaintiff remained in the RHU from May 27, 2005 until August 23, 2005 when he was transferred to the State Correctional Institution at Fayette (“SCI Fayette”). Id. at ¶¶ 2, 4. After the transfer, he was in the RHU at SCI Fayette for two weeks before being returned to SCI Forest on September 6, 2005. Id. at ¶ 4.

Plaintiff alleges that while he was in the RHU at SCI Graterford, he was denied treatment for Hepatitis C and for severe back pain resulting from “sciatita [sic], osteoarthritis, osteophytes, and lumbar strain.” Id. at ¶ 2. Specifically, he alleges that he was seen at SCI Graterford by Dr. Arias on “a number of occasions,” and that he provided Dr. Arias with medical records from his primary care physician in Philadelphia, but that Dr. Arias refused to provide effective medical treatment for his back pain and Hepatitis C. Id. Grievance Coordinator Wendy Moyer refused to file Plaintiff’s grievances against either Dr. Arias or the medical department. Id. at ¶ 3.

Plaintiff further alleges that when he was transferred from SCI Graterford to SCI Fayette, the medical department ordered pain medication for his back problems, but did not treat his Hepatitis C. Id. at ¶ 4. When he was transferred from SCI Fayette back to SCI Forest, the medical department again ordered treatment for his back problems, but did not prescribe treatment for his Hepatitis C. Id. at ¶ 5. Plaintiff contends that these failures to prescribe Hepatitis C treatment demonstrated deliberate indifference to his medical needs because he had

been prescribed Hepatitis C treatment during a prior incarceration.<sup>2</sup> Id.

Plaintiff was transferred from SCI Forest back to SCI Graterford on October 11, 2005, and was placed in the general prison population until November 4, 2005. Id. at ¶ 6. On that date, he was removed from the general prison population and placed in the RHU. Id. Plaintiff contends that his placement in the RHU again was related to the “1982 incident,” and that Deputy Superintendent Murray ordered the move “without any due process.” Id.

During his stay at SCI Graterford, Plaintiff went to the medical department to get the pain medication he had received while at SCI Forest. Id. at ¶ 7. He initially was given pain medication, but was told that he would have to see Dr. Arias in order for the medication to be continued. Id. Dr. Arias immediately discontinued his pain medication and ordered him to lose weight.<sup>3</sup> Id. In addition, Dr. Arias continued to refuse to order treatment for his Hepatitis C. Id. Plaintiff alleges that Dr. Arias “told [him] as long as [Dr. Arias was] medical director [he] would not be receiving treatment [he] received previously.” Id. Plaintiff again attempted to file grievances with Grievance Coordinator Moyer, but she refused to file them. Id.

Plaintiff further alleges that from November 22, 2005 through November 30, 2005, while in the RHU at SCI Graterford, he was deprived of any light in his cell which prevented him from doing legal work. Id. at ¶ 9. As a result, he missed deadlines in “other legal matters.” Id. Plaintiff filed a grievance related to this incident. Id.

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<sup>2</sup> Plaintiff alleges that Dr. William Conforti prescribed Hepatitis C treatment for him in February 2003 while he was incarcerated at SCI Greenberg. Compl. at ¶ 5. His argument that the failure by subsequent prison medical personnel to prescribe him this same treatment constitutes deliberate indifference to his medical needs will be addressed infra.

<sup>3</sup> Plaintiff alleges in the Amended Complaint that he weighs over 300 pounds. Amended Compl. at ¶ 6.

Plaintiff was transferred from the RHU at SCI Graterford back to SCI Forest on December 20, 2005, where he was placed in the general prison population. Id. at ¶ 10. He visited the medical department to receive treatment for his Hepatitis C and his back problems, but was told by P.A. Rhonda Sherbine that he would have to produce medical records from his primary care physician in Philadelphia indicating why he needed the treatments he requested. Id. Plaintiff provided these records, but “[n]o treatments were offered other than experimental treatments that had already been proven to be ‘ineffective.’” Id. Dissatisfied, Plaintiff requested to see a doctor. Id. Plaintiff was seen by Dr. Robert Maxa on January 9, 2006. Id. Dr. Maxa, however, did not provide Plaintiff with the treatment he sought, i.e. the treatment that had previously been ordered at SCI Greenburg in 2003 by Dr. Conforti. Id.<sup>4</sup>

On March 31, 2006, Plaintiff saw P.A. Sherbine again regarding his back pain. Amended Compl. at Supplemental Pleading, ¶ 1. P.A. Sherbine did not provide Plaintiff with treatment for his back pain. Id. P.A. Sherbine also told Plaintiff that his Hepatitis C was not serious enough to warrant treatment, and that he should not be concerned about treatment because his body was “handling the disease fairly well.” Id. at Supplemental Pleading, ¶ 2. Plaintiff contends that the medical records from his primary care physician in Philadelphia that he had provided to PA Sherbine contradict this diagnosis. Id. Plaintiff further contends that the Department of Corrections should have ordered a liver biopsy or an MRI, and that he has been taken off of the only medications that provide him with relief from his back problems. Id.

On April 18, 2006, Plaintiff passed out while leaving the law library. Id. Prior to this

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<sup>4</sup> Plaintiff contends that Dr. Paul Noel also provided treatment to him at SCI Greenburg in 2003.

incident, Plaintiff had complained of loss of energy, tiredness, dry mouth, and other symptoms consistent with diabetes. Mot. to Amend at Supplemental Pleading, ¶ 4. Blood work had been ordered on April 12, 2006, but was not done until the day after he passed out. Id. He subsequently was diagnosed with diabetes which he claims the medical department at SCI Forest had known about since December 2005. Amended Compl. at Supplemental Pleading, ¶ 2; Mot. to Amend at Supplemental Pleading, ¶4.

Plaintiff was returned to the RHU at SCI Graterford for a third time from May 16, 2006 through July 3, 2006. See Amended Compl. ¶ 20; Plaintiff's Response to Motion to Dismiss of Murray and Moyer (docket no. 31), at ¶ 31. He alleges that again he was placed in the RHU without any due process. Id.

## **II. LEGAL STANDARD**

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). The Court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any facts that could be proved by the plaintiff. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988). Furthermore, a pro se complaint, such as Plaintiff's, "must be held to less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Estelle v. Gamble, 429 U.S. 97, 106 (1976) (internal

citations omitted); see also United States v. Robinson, 495 F.Supp. 696, 698 (E.D. Pa. 1980) (motions to dismiss prisoners' pro se civil rights actions for failure to state a claim are subject to a very strict standard of review).

### **III. ANALYSIS**

To state a cause of action under § 1983, Plaintiff must show that (1) Defendants acted under color of state law; and (2) their actions deprived him of rights secured by the United States Constitution or federal statutes. Kost v. Kozakiewicz, 1 F.3d 176, 184 (3d Cir. 1993). In this case, Defendants are all officials of the Pennsylvania Department of Corrections (the “DOC”) or medical providers contracted by the DOC. Thus, the issue is whether Defendants deprived Plaintiff of his rights under the United States Constitution or federal statutes.

As a preliminary matter, Plaintiff's claims for monetary damages against Defendants in their official capacities must be dismissed. The Supreme Court has held that state agencies and state officials in their official capacities are not “persons” subject to suit for damages under § 1983. Will v. Mich. Dept. of State Police, 491 U.S. 58, 70-71 (1989). However, Plaintiff's claims for monetary damages may proceed against Defendants in their individual capacities. See Hafer v. Melo, 502 U.S. 21, 25 (1991).

#### **A. Placement in Restrictive Housing Unit (RHU)**

Plaintiff brings a claim against SCI Graterford Deputy Superintendent Murray, alleging that he was incarcerated in the RHU without due process of law from May 2005 to August 2005, from September 2005 to December 2005, and from May 16, 2006 to July 3, 2006. The number or length of Plaintiff's brief incarcerations in restricted housing do not alone implicate the Due Process Clause of the Fourteenth Amendment. “As long as the conditions or degree of

confinement to which the prisoner is subjected is within the sentence imposed upon him and is not otherwise violative of the Constitution, the Due Process Clause does not in itself subject an inmate's treatment by prison authorities to judicial oversight.” Asquith v. Dept. of Corrections, 186 F.3d 407, 410 (3d Cir. 1999) (quoting Hewitt v. Helms, 459 U.S. 460, 468 (1983)). Here, Plaintiff does not allege that his confinement exceeded his sentence or otherwise violated the federal Constitution, and therefore no liberty interest created by the Due Process Clause itself was infringed.

The Supreme Court has recognized that state prison regulations may, in some circumstances, create liberty interests that are protected by the federal Due Process Clause. Sandin v. Conner, 515 U.S. 472, 483-84 (1995). However, “these interests will be generally limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” Id. at 484. The Third Circuit, in applying Sandin, has held that courts should not compare the prisoner's own life before and after the alleged deprivation. Rather, “we must compare the prisoner's liberties after the alleged deprivation with the normal incidents of prison life.” Asquith, 186 F.3d at 411-12.

The Third Circuit has held that highly restricted housing conditions inside a prison do not constitute an atypical and significant hardship unless they persist for an extremely long time. See Griffin v. Vaughn, 112 F.3d 704, 706-9 (3d Cir. 1997) (holding that fifteen months in administrative detention did not implicate a liberty interest and that failure to give the plaintiff a hearing prior to his transfer to administrative custody was not a violation of procedural due process); Torres v. Fauver, 292 F.3d 141, 151 (3d Cir. 2002) (finding no protected liberty interest where prisoner was held in disciplinary detention for 15 days and administrative segregation for

120 days); Smith v. Mensinger, 293 F.3d 641, 654 (3d Cir. 2002) (determining that seven months in disciplinary confinement did not infringe a protected liberty interest); Sims v. Vaughn, 189 Fed. Appx. 139, 141 (3d Cir. 2006) (finding no cognizable liberty interest where prisoner was confined in the RHU for 67 days).<sup>5</sup> In the instant case, where Plaintiff was never in the RHU at SCI Graterford for more than four months at a time, there is no protected liberty interest at issue because there has been no “atypical” or “significant” hardship in relation to the ordinary incidents of prison life. Accordingly, the claim against Defendant Murray will be dismissed.

### **B. Deprivation of Light**

Plaintiff alleges that he was forced to stay in a cell in the RHU at SCI Graterford “without any lighting what-so-ever” for a 9-day period from November 22, 2005 to November 30, 2005. Compl. ¶ 9. He contends that such treatment amounts to cruel and unusual punishment in violation of the Eighth Amendment.

In order to state a claim for an Eighth Amendment violation, a plaintiff must allege (1) an objectively serious deprivation of an identifiable human need and (2) that a prison official acted with deliberate indifference in effecting the deprivation. Sampson v. Berks County Prison, 171 Fed. Appx. 382, 384 (3d Cir. 2006) (citing Wilson v. Seiter, 501 U.S. 294, 298-99 (1991); Fuentes v. Wagner, 206 F.3d 335 (3d Cir. 2000)). “[A]dequate lighting is one of the fundamental attributes of ‘adequate shelter’ required by the Eighth Amendment.” Hoptowit v. Spellman, 753 F.2d 779, 783 (9<sup>th</sup> Cir. 1985). Thus, Plaintiff has alleged a serious deprivation of an identifiable human need.

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<sup>5</sup> The only case where the court found an atypical and significant restriction was Shoats v. Horn, 213 F.3d 140 (3d Cir. 2000), where the prisoner had been held in solitary confinement for eight years.



With respect to the second element of an Eighth Amendment claim, Plaintiff alleges that he complained about his treatment by filing a grievance, but he does not specify which prison official (or officials) acted with deliberate indifference. Liability cannot lie in a § 1983 action absent personal involvement on the part of a defendant and respondeat superior is generally insufficient to show personal involvement. Robinson v. City of Pittsburgh, 120 F.3d 1286, 1294 (3d Cir. 1997), citing Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). However, Plaintiff states several times in his pleadings that Deputy Superintendent Murray was responsible for his confinement to the RHU. Murray, in his role as a supervisor at the prison, could be held liable for the actions of a subordinate if he had actual knowledge of and acquiesced in the subordinate's unlawful acts. Id. Accordingly, since the Court must construe pro se pleadings liberally, the Court will read the Complaint to allege deliberate indifference on the part of Murray and allow the claim to proceed.

### **C. Denial of Access to Courts**

As discussed above, Plaintiff alleges that he was deprived of light in the RHU for a 9-day period in November 2005. He claims that, as a result, he was “prevented ... from being able to do any legal work which caused [him] to loose [sic] or miss legal deadlines in other legal matters.” Compl. ¶ 9. Although Plaintiff only specifically alleges that the deprivation of light was cruel and unusual punishment, reading the pro se Complaint liberally, the Court must also analyze his claim as one implicating his right of access to courts under the First and Fourteenth Amendment.

In order to prevail on an access to courts claim, Plaintiff must demonstrate that he suffered an “actual injury” due to the interference with his right of access. Booth v. King, 346 F.

Supp. 2d 751, 758 (E.D. Pa. 2004) (citing Lewis v. Casey, 518 U.S. 343 (1996)); Oliver v. Fauver, 118 F.3d 175 (3d Cir. 1997)). Although Plaintiff does not allege that any of his legal rights were prejudiced by the missed deadlines, the Court cannot conclude at this stage that there is no set of facts under which Plaintiff could demonstrate actual injury. The Court again will construe the allegations pertaining to Plaintiff's deprivation of light liberally to assert a claim against Superintendent Murray, and will allow the claim to move forward at this stage.

#### **D. Deprivation of Medical Treatment**

Plaintiff alleges that Dr. Arias, Dr. Maxa, and P.A. Sherbine refused to provide him adequate medical treatment for his back problems and Hepatitis C. A prison official may violate an inmate's Eighth Amendment rights if he or she is deliberately indifferent to the inmate's serious medical needs or to a substantial risk of serious harm. Estelle v. Gamble, 429 U.S. 97 (1976); Farmer v. Brennan, 511 U.S. 825 (1994). To set forth a cognizable Eighth Amendment claim for violation of the right to adequate medical care, an inmate must allege: (1) a serious medical need, and (2) behavior on the part of prison officials that constitutes deliberate indifference to that need. Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979).

If denial or delay in the provision of medical attention causes "unnecessary and wanton infliction of pain," the medical need is a serious one within the ambit of the Eighth Amendment. Estelle, 429 U.S. at 103. As to the second element, the Third Circuit has held, "where prison authorities deny reasonable requests for medical treatment . . . and such denial exposes the inmate to undue suffering or the threat of tangible physical injury, deliberate indifference is manifest." Monmouth County Correctional Inst. Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir.

1987) (internal citations omitted).<sup>6</sup>

### **1. Claims Against Dr. Arias**

Plaintiff contends that during his stays in the RHU at SCI Graterford in 2005, Dr. Arias refused to provide him medication for his back problems, refused to treat his Hepatitis C, and stated that as long as he was medical director, Plaintiff would not receive the medical treatment needed. Compl. ¶¶ 2, 7, 10. Plaintiff contends that Dr. Arias' behavior, and in particular, his statement that Plaintiff would not receive needed medical treatment as long as he was medical director, manifest deliberate indifference to serious medical needs.

In response, Dr. Arias argues that Plaintiff has failed to state a claim because the Complaint acknowledges that Plaintiff saw him several times and therefore received medical attention for both his back problems and his Hepatitis C. Moreover, he contends that the Complaint also acknowledges that he ordered Plaintiff to lose weight and that this order was based on his medical opinion that weight loss, rather than pain medications, were appropriate

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<sup>6</sup> Plaintiff suggests several times in his pleadings that Dr. Arias, Dr. Maxa, and P.A. Sherbine demonstrated deliberate indifference to his medical needs because they failed to prescribe the treatment for Hepatitis C that had been ordered in 2003 by Dr. Conforti. See Compl. ¶¶ 5, 20; Amended Compl. at Supplemental Pleading, ¶ 1. In response to these allegations, Dr. Arias, Dr. Maxa, and P.A. Sherbine contend that the Court should take judicial notice of the dismissal of an action Plaintiff filed in the United States District Court for the Western District of Pennsylvania in which he alleged that the treatment Dr. Conforti prescribed for his Hepatitis C was never administered. See Second Motion to Dismiss of Maxa, Arias, and Sherbine at pp. 4-5 (citing DiCicco v. Willow Grove Bank, 308 F. Supp. 2d 528, 536 (E.D. Pa. 2004)). Defendants argue that the Court's finding in that case that Plaintiff failed to exhaust his administrative remedies should preclude him from arguing in the instant case that they demonstrated deliberate indifference by denying him the treatment that Dr. Conforti had allegedly ordered in 2003. See id. at pp. 8-10. However, the Court cannot conclude that Dr. Conforti never prescribed Hepatitis C treatment just because Plaintiff failed to exhaust his administrative remedies with respect to the claim that Dr. Conforti's prescribed treatment was not administered.

treatments. He contends that Plaintiff's preference for pain medication rather than losing weight is insufficient to establish an Eighth Amendment claim regarding Plaintiff's back pain.

An inmate's disagreement with his medical treatment is insufficient to establish deliberate indifference. See Ayala v. Terhune, et al., 2006 WL 2355153, at \*2 (3d Cir. Aug. 15, 2006) (citing Inmates of Allegheny Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979)); Anderson v. Bureau of Prisons, et al., 176 Fed. Appx. 242, 243 (3d Cir. 2006). However, Plaintiff has also alleged that Dr. Arias stated that he would never receive the medical treatment he needed. Taking the facts alleged to be true, the Court cannot conclude that there is no set of facts under which Plaintiff might demonstrate deliberate indifference to his back problems and Hepatitis C rather than a disagreement with Dr. Arias' medical opinion. Accordingly, Plaintiff's Eighth Amendment claims against Dr. Arias will not be dismissed at this stage.

## **2. Claims Against Dr. Maxa**

Plaintiff alleges that following his September 2005 and December 2005 transfers from SCI Graterford to SCI Forest, he was seen by Dr. Maxa. He claims that Dr. Maxa "examined [him] but would not provide effective treatment which had previously been ordered originally by [Dr. Conforti at SCI Greenburg in 2003]." Compl. ¶ 10. In Plaintiff's first Response to the Motion to Dismiss of Arias, Maxa, and Sherbine (docket no. 26; hereinafter, "First Response"), he indicates that when he was transferred to SCI Forest in September 2005, Dr. Maxa and P.A. Sherbine examined him and placed him on medications that provided relief from back pain, but did not prescribe Hepatitis C treatment. See First Response ¶1F, H. When Plaintiff returned to SCI Forest in December 2005, he still was not prescribed Hepatitis C treatment, and, with respect to his back problems, "was experimented on with a number of other pain relief medications

which cause [him] absolutely no pain relief but [caused him] to have stomach problems instead.”  
Id. at ¶1H.

Even reading Plaintiff’s pleadings generously, he has failed to set forth an Eighth Amendment claim against Dr. Maxa. “Without the requisite mental state, a prison official's conduct alone will not constitute deliberate indifference.” Anderson, 176 Fed. Appx. at 243 (citing Farmer v. Brennan, 511 U.S. 825, 837-38 (1994)). Plaintiff makes no allegation that Dr. Maxa refused to provide him with medical treatment – on the contrary, Dr. Maxa examined him in 2005 and concluded that, at that time, his medical problems were being treated appropriately, regardless of other treatments Plaintiff might have been prescribed in the past (such as the Hepatitis C treatment allegedly prescribed by Dr. Conforti). Although Plaintiff might have preferred different treatments for his back problems and his Hepatitis C, his allegations do not suggest that Dr. Maxa acted with deliberate indifference to his medical needs. See Ayala, 2006 WL 2355153, at \*2. Accordingly, Plaintiff’s claims against Dr. Maxa will be dismissed.

### **3. Claims Against P.A. Sherbine**

During his periods of incarceration at SCI Forest, Plaintiff was also seen by P.A. Sherbine. After Plaintiff was transferred from SCI Graterford to SCI Forest in September 2005, P.A. Sherbine ordered medications to treat the pain associated with his back problems, but did not prescribe treatment for his Hepatitis C. Compl. ¶ 5. When Plaintiff returned to SCI Forest in December 2005, he again was seen by P.A. Sherbine, who provided him with “experimental treatments” that Plaintiff contends had already been proven ineffective. Compl. ¶ 10; First Response at ¶ 1H. Plaintiff alleges that, despite providing P.A. Sherbine with paperwork establishing the length of his stay, she told him that he would not be in the D.O.C. system long

enough to receive treatment for his Hepatitis C. First Response at ¶ 11. He also alleges that another time, P.A. Sherbine advised him that his Hepatitis condition was not serious enough to warrant treatment and for him not to be concerned because his body is handling the disease fairly well. Mot. to Amend at Supplemental Pleading, ¶ 2.

Plaintiff's claims against P.A. Sherbine suffer from the same deficiency as his claims against Dr. Maxa. Plaintiff has not alleged that P.A. Sherbine refused to provide him with medical treatment, nor do the facts he alleges give rise to such an inference. Rather, the assertions Plaintiff has made merely demonstrate that he disagreed with P.A. Sherbine's medical assessment regarding the appropriate treatments for his medical problems. However, a prisoner's disagreement with prescribed medical treatment is not sufficient to establish a claim under § 1983. See, e.g., Ayala, 2006 WL 2355153, at \*2; Inmates of Allegheny, 612 F.2d at 762; Anderson, 176 Fed. Appx. at 243. Regardless of whether Plaintiff received different treatments in the past, the Court cannot conclude that P.A. Sherbine acted with deliberate indifference to Plaintiff's medical needs since she concluded that he was being treated appropriately the times she examined him in 2005. Accordingly, Plaintiff's claims against P.A. Sherbine will be dismissed.

#### **4. Failure to Diagnose Plaintiff's Diabetes**

Plaintiff's Amended Complaint alleges that he passed out on April 18, 2006 while at SCI Forest, and subsequently was diagnosed with diabetes. Amended Compl. ¶ 2. Prior to April 18, Plaintiff had complained of loss of energy, tiredness, dry mouth, and other symptoms consistent with diabetes. Mot. to Amend at ¶ 4. He alleges that blood work had been ordered on April 12, 2006, but that it was not performed until April 19, 2006, and that had it been performed

sooner he would not have passed out. Amended Compl. at Supplemental Pleading, ¶ 2; Mot. to Amend at Supplemental Pleading, ¶ 4. He also alleges that the medical department at SCI Forest knew about his diabetes in December 2005. Amended Comp. at Supplemental Pleading, ¶ 2.

Plaintiff fails to name the person in the medical department at SCI Forest who allegedly is responsible for delaying his diabetes diagnosis. Moreover, Plaintiff's allegation that blood work had been ordered on April 12, 2006 after he reported his symptoms refutes any claim that the SCI Forest medical department was deliberately indifferent to his condition. Accordingly, the Court will dismiss Plaintiff's allegations regarding his diabetes.

#### **E. Failure to Respond to Grievances**

Plaintiff claims that Wendy Moyer, Grievance Coordinator at SCI Graterford, violated his due process rights by refusing to file his grievances against Dr. Arias and the SCI Graterford medical department. "Prisoners are not constitutionally entitled to a grievance procedure and the state creation of such a procedure does not create any federal constitutional rights." Wilson v. Horn, 971 F. Supp. 943, 947 (E.D. Pa. 1997) (internal citations omitted), aff'd, 142 F.3d 430 (1998); Ayala, 2006 WL 2355153, at \*3.<sup>7</sup> Thus, even accepting Plaintiff's allegations as true, Moyer's alleged failure to process Plaintiff's grievances "did not violate his rights to due process and is not actionable." Stringer v. Bureau of Prisons, 145 Fed. Appx. 751, 753 (3d Cir. 2005) (citing Antonelli v. Sheahan, 81 F.3d 1422, 1430 (7<sup>th</sup> Cir. 1996)). The Court will dismiss Plaintiff's due process claim against Moyer.<sup>8</sup>

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<sup>7</sup> Prisoners have a constitutional right to seek redress of their grievances from the government; however, that right is the right of access to the courts. Wilson, 971 F.Supp. at 947.

<sup>8</sup> "[P]rison administrators cannot be found deliberately indifferent under the Eighth Amendment because they fail to respond to the medical complaints of an inmate being treated by

#### **IV. CONCLUSION**

For the aforementioned reasons, Defendants' Motions will be granted in part and denied in part. An appropriate Order follows.

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a prison physician, or because, as non-physicians, they defer to the medical judgment of prison physicians.” Ayala, 2006 WL 2355153, at \*3. Thus, Plaintiff’s claims that Moyer refused to file his grievances regarding his medical treatment are not sufficient to establish an Eighth Amendment claim.



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>CURT THOMAS</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	<b>NO. 06-CV-291</b>
	:	
<b>DOCTOR ARIAS, et al.</b>	:	
	:	

**ORDER**

**AND NOW**, this 23RD day of January, 2007, upon consideration of Defendants' Motions to Dismiss (docket nos. 19, 22, 29) and Plaintiff's Responses thereto (docket nos. 26, 28, 31), and for the reasons stated in the accompanying memorandum, it is **ORDERED** that the Motions are **GRANTED** in part and **DENIED** in part.

Accordingly, the following claims are **DISMISSED**:

- (1) The § 1983 claim against Deputy Superintendent Murray alleging Plaintiff was placed in the RHU in violation of the Due Process Clause.
- (2) The § 1983 claims against Dr. Maxa and P.A. Sherbine alleging failure to provide adequate medical treatment under the Eighth Amendment..
- (3) The § 1983 claim against Grievance Coordinator Moyer alleging she refused to file his grievances in violation of the Due Process Clause.
- (4) The § 1983 claims against all Defendants in their official capacities.

In all other respects, the Motions are **DENIED**.

**BY THE COURT:**

**S/ BRUCE W. KAUFFAN**  
**BRUCE W. KAUFFMAN, J.**